IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 909 OF 2004

Dr. Ashok Maruti Patil ... Appellant (Ori.Plaintiff)

V/s

Shri Rajiv Annasaheb Lale & ors. ... Respondents (Ori.Defendants)

Mr. R.V. More for the appellant.

Mr. S.D. Dharmadhikari for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 11TH JULY, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Sangli, dated 18.6.2004 allowing the appeal and setting aside the decree passed by the Joint Civil Judge, Jr.Divn., Sangli dated 29.3.2003 decreeing the suit for perpetual injunction in order to restrain the defendants from obstructing his possession in the suit property.

2. I have heard the learned counsel for both parties. Perused the record.

3. The plaintiff filed the suit for perpetual injunction against the defendants on the ground that he is tenant in the suit property and defendants were obstructing his possession therein. The plaintiff came with the case that he was in possession of 4 rooms on first floor including the right to use staircase of the property. According to him, he was tenant since last 13 years and residing with his family. Defendant No.4 was the owner and he was paying rent to her. Other defendants are co-owners. However, all the defendants are trying to obstruct him by constructing wall in front of it. Hence the suit is filed.

4. Defendants 1 to 3 appeared and other defendants did not appear though served with suit summons. Defendant No.3 resisted the suit by filing written statement contending that defendant No.4 was not having any right to let out the said premises. Possession of the plaintiff was not legal and there is no relationship of landlord and tenant between them as plaintiff's possession was illegal, he is not entitled for any equitable relief of injunction. On such and other grounds the suit was dismissed.

5. The learned Trial Judge, after hearing both parties

and on the basis of available evidence, came to the conclusion that the plaintiff had proved his physical possession in the suit property but he failed to prove his lawful possession therein and further proceeded to hold that defendants were obstructing his possession and, as such, he was held entitled for perpetual injunction and suit came to be decreed.

6. The appeal was carried to the District Court, Sangli. The learned lower appellate Court, after hearing both parties, came to the conclusion that the findings recorded by the Trial Court holding that the plaintiff was entitled for perpetual injunction was erroneous. It was further held that the plaintiff failed to prove his legal possession over the suit property alongwith the fact that he failed to establish alleged obstruction from the defendants and, as such, the appeal came to be allowed. Hence the present appeal.

7. At the outset, it may be noted that there is no substantial question of law involved in this appeal. The learned counsel for the appellant only sought to rely upon the Apex Court ruling in the case of **Prataprai N. Kothari v/s John Braganza, reported in AIR 1999 SC**

1666, the ratio of which is to the effect that, when there was suit for permanent injunction against dispossession and suit claim was based on plea of long possession and not on title and when defendant also did not raise any plea that he had title to the suit property, then in that case, dismissal of suit on the ground that defendant had proved his title and on doctrine possession follows title was improper. In my considered view, on perusal of the said judgment, it is found that it is not at all applicable to the present case. Perusal of the judgments of the Courts below definitely shows that both the Courts have recorded concurrent findings to the effect that plaintiff has failed to establish his lawful possession in the suit property and in my view, the concurrent findings need not be and cannot be disturbed by this Court especially when it is found that those are based on cogent and reasonable evidence which is seen to be properly appreciated by both the Courts below.

The only question remains, whether the plaintiff’s possession can be disturbed in effect by dismissing the appeal. In this regard, it must be noted that it is an admitted position that the defendants are owners of the property. The factual aspects regarding the dealing

inter-se amongst the defendants are also looked into by both the Courts below and, therefore, the view expressed by the lower appellate Court in that regard is seen to be legal and proper and, therefore, need not be disturbed.

In the result, the appeal has no merit and hence required to be dismissed and hence appeal stands dismissed with no order as to costs.

Consequently, Civil Application No. 1066 of 2004 also stands dismissed with no order as to costs.

8. At this stage, the learned counsel for the appellant prays for stay of this order. In view of the facts and circumstances, the order stands stayed for a period of six weeks.

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